

EXHIBIT 42

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

--oOo--

COPART

Plaintiff,

VS.

) Case No. C072684 CW

CRUM & FORSTER INDEMNITY
COMPANY, UNITED STATES FIRE
INSURANCE COMPANY, and DOES
1-10

CERTIFIED COPY

Defendants.

AND RELATED COUNTERCLAIMS

DEPOSITION OF

MONICA STREACKER

Thursday, May 22, 2008

REPORTED BY: COREY W. ANDERSON, CSR 4096 (409497)

MERRILL LEGAL SOLUTIONS

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A P P E A R A N C E S

FOR THE PLAINTIFF:

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BY: VEDICA PURI, ESQ.
415-433-8000

FOR THE DEFENDANT:

BULLIVANT, HOUSER, BAILEY, PC
601 California Street, Suite 1800
San Francisco, California 94108-2823
BY: SAMUEL H. RUBY, ESQ.
415-352-2700

--oOo--

ALSO PRESENT: PORTIA BETTIS
PATRICK MURRAY, VIDEOGRAPHER

--oOo--

13:22:26 1 A. Yes.

13:22:28 2 Q. Okay. So looking to item 4, which is

13:22:34 3 coverages provided, each one of those boxes, if you

13:22:40 4 will, that have location number and building number,

13:22:43 5 there are three different boxes. Each one of those

13:22:45 6 is filled in. Is that because there are three

13:22:48 7 different kinds of coverages being described?

13:22:52 8 A. Yes.

13:22:53 9 Q. And what is the first coverage being

13:22:58 10 described?

13:22:58 11 A. Buildings.

13:22:59 12 Q. Okay. And the limit of insurance is five

13:23:02 13 million. And the covered cause of loss is special.

13:23:06 14 And is there a form that explains what the

13:23:09 15 special coverage cause of loss is?

13:23:11 16 A. Yes.

13:23:13 17 Q. And Locations Number says "All" and

13:23:16 18 building number says "One." What is that supposed

13:23:20 19 to reference?

13:23:21 20 A. All buildings described on the statement

13:23:24 21 of values and which have -- also which have a limit

13:23:40 22 on the statement of values also.

13:23:43 23 Q. Is there anywhere in the policy that

13:23:46 24 actually says that, in order to have coverage all

13:23:50 25 buildings --

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13:23:50

1

A. Yes.

13:23:54

2

Q. Tell me about that.

13:23:57

3

A. On the next page. "Coverage A. We will

13:24:02

4

pay for direct physical loss of, or to damage to,

13:24:05

5

covered property at the premises described in the

13:24:07

6

declarations caused by or resulting from any covered

13:24:11

7

cause of loss."

13:24:16

8

Q. Is there anywhere else in the policy that

13:24:18

9

specifically references that coverage is contingent

13:24:21

10

on what's set forth in the statement of values, or

13:24:24

11

any language like that?

13:24:27

12

A. No. Just here. But -- no, it just says

13:24:30

13

it's the premises described.

13:24:31

14

Q. In the declarations? The premises

13:24:35

15

described in the declarations.

13:24:36

16

Right?

13:24:37

17

A. Right. Then it goes on to describe

13:24:39

18

what -- what is a building, what is personal

13:24:41

19

property.

13:24:43

20

Q. And the premises described in the

13:24:46

21

declarations going back to POL 143 are what?

13:24:56

22

A. I'm sorry, what's the question?

13:24:57

23

Q. I'm sorry. So linking that paragraph that

13:24:59

24

you just read to me which says premises described in

13:25:02

25

the declaration, so where are the premises described

13:31:11 1 covered?

13:31:16 2 A. To get -- how do you mean?

13:31:20 3 Q. I mean is -- is the premium totaled based

13:31:29 4 on a specific number assigned to each location?

13:31:38 5 A. Yes.

13:31:39 6 Q. And where would I look to find an

13:31:40 7 underwriting file how that premium was calculated?

13:31:48 8 A. There is some -- there is some rating, a

13:31:52 9 rating worksheet or some notes or using the same

13:31:56 10 rates as the year before, it just depends on -- on

13:32:00 11 how it was determined that we would proceed.

13:32:05 12 Q. So is setting the premium a matter of

13:32:08 13 formula, or are there other factors that come into

13:32:11 14 it?

13:32:14 15 A. The premium is rate, a rate times the

13:32:16 16 exposure. And that's -- and the -- the product is

13:32:21 17 the premium.

13:32:23 18 Q. And so I guess what I'm saying, then, is

13:32:30 19 when you say rate times exposure, where do you get

13:32:32 20 the rate from?

13:32:32 21 A. It's -- it's -- it's either from

13:32:37 22 experience or -- of the underwriter or what's

13:32:41 23 standard in the industry at that time, market

13:32:44 24 conditions from the Insurance Services Bureau.

13:32:49 25 There is a number of places where you can get

13:32:52 1 information about what the rates should be for
13:32:54 2 certain exposure.

13:32:56 3 Q. Do you remember how you obtained the rate
13:32:57 4 for this particular exposure?

13:32:59 5 A. No.

13:33:02 6 Q. But you would have been the one to obtain
13:33:03 7 the rate?

13:33:04 8 A. Yes.

13:33:04 9 Q. And then let's talk about exposure. What
13:33:06 10 does that mean?

13:33:08 11 A. Values at -- and at -- values at risk,
13:33:13 12 values at location, values in major damage areas
13:33:19 13 versus non-major damage areas.

13:33:28 14 Q. So in other words, let's take any of the
13:33:30 15 yards that Copart had listed a series of numbers
13:33:35 16 throughout the entire statement of values for. Are
13:33:37 17 you saying that in order to calculate the premium,
13:33:40 18 one of the things that you would have done would be
13:33:42 19 to have taken those numbers, the location value, and
13:33:45 20 put that into the formula?

13:33:56 21 A. You would -- I would group together the
13:33:58 22 Florida locations to get a wind load, the California
13:34:05 23 locations for an earthquake load, the Texas
13:34:07 24 locations for a wind load, and then also calculate
13:34:10 25 the fire rates, the flood rates and then an all

13:34:17 1 other perils rate.

13:34:26 2 Q. So location values played a role in

13:34:28 3 calculating the premiums to the extent that you

13:34:30 4 grouped them and assigned a particular value to

13:34:35 5 them?

13:34:37 6 A. I grouped together the states that had a

13:34:40 7 major damage exposure. But all the other locations,

13:34:44 8 they also were -- were -- were counted and also

13:34:48 9 rated against.

13:34:49 10 Q. I see. Were you the final word on what

13:34:56 11 the premium would be, or did that have to get home

13:34:59 12 office approval for this particular policy?

13:35:00 13 A. It had to get home office approval.

13:35:02 14 Q. And in this case, did John French approve

13:35:04 15 the numbers?

13:35:05 16 A. It was either him or John Schlomann.

13:35:12 17 Q. And is the premium partially even set

13:35:16 18 based on the TIVs?

13:35:21 19 A. Is it partially set?

13:35:22 20 Q. Yeah. Is that one of the factors? I know

13:35:24 21 that there is the rate times exposure.

13:35:26 22 A. No. That's one of the major factors.

13:35:29 23 Q. Oh, okay. And does that go back into our

13:35:34 24 grouping? Is that --

13:35:35 25 A. Grouping for major damage, locations, and

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13:35:37 1 then also each individual location also carries a
13:35:41 2 rate times the exposure for that location.

13:35:56 3 Q. So for the purposes of the '04-'05 policy,
13:36:05 4 have we seen today as one of the exhibits that I
13:36:08 5 have shown you the statement of values or the
13:36:11 6 schedule that was on file with the company?

13:36:13 7 A. Yes.

13:36:14 8 Q. Is that the 9/1/04 schedule that we looked
13:36:17 9 at? I don't have the exhibit number handy.

13:36:23 10 A. Let me see. I don't see the total, I
13:36:34 11 don't see the total here. But if it's -- if the
13:36:36 12 total is the same that's on POL 094, then that would
13:36:46 13 be it.

13:36:58 14 Q. In looking at that, putting aside the
13:37:00 15 total issue for the moment, looking at the SOV, are
13:37:04 16 there any values reflected for yard 105 in that
13:37:07 17 particular SOV?

13:37:24 18 A. No.

13:37:31 19 Q. Is there a yard 108 reflected in that SOV?

13:37:34 20 A. Yes.

13:37:34 21 Q. Are there any values reflected for that
13:37:36 22 yard?

13:37:37 23 A. No.

13:37:40 24 Q. Did you think that was odd when you
13:37:42 25 received this SOV?

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13:37:43 1 A. No. It's fairly standard, because when
13:37:48 2 the insured makes, puts together a statement of
13:37:51 3 values, it's also put together for the liability,
13:37:53 4 the casualty, and they have to rate number of acres
13:37:56 5 or square footage.

13:37:58 6 So many times I'll see items where there
13:38:02 7 is no values. And it's only -- it's only for
13:38:05 8 general liability purposes, or for some other
13:38:09 9 purpose.

13:38:11 10 Q. But at no point in time did you say to
13:38:14 11 anybody at Marsh after seeing this particular SOV
13:38:18 12 where there were no values listed for certain yards
13:38:22 13 that there would be no coverage afforded for those
13:38:25 14 yards if there was no values listed?

13:38:27 15 A. I'm sorry, can you repeat that?

13:38:29 16 Q. But at no point in time did you say to
13:38:31 17 anybody at Marsh after seeing this particular SOV
13:38:34 18 where there were no values listed for certain yards
13:38:37 19 that there would be no coverage afforded for those
13:38:39 20 yards if there was no values listed?

13:38:44 21 A. No. I relied on Marsh to provide me with
13:38:47 22 a statement of values that was accurate.

13:38:53 23 Q. And during the moving into the end of '04,
13:38:58 24 beginning '05, just off the top of your head -- and
13:39:01 25 I'll show you documents later -- do you remember

14:16:58 1 Q. Okay. And same question with respect to
14:17:01 2 the top part of that page under the coverages where
14:17:04 3 it talks about blanket limits. Would you have not
14:17:08 4 necessarily paid attention to the description, but
14:17:10 5 you would have looked at some of the numbers?

14:17:12 6 A. The numbers, yes.

14:17:17 7 Q. Okay. And in reviewing these
14:17:18 8 specifications and the equipment schedule that's
14:17:22 9 attached and the SOV which I don't think is attached
14:17:24 10 to this particular document, but we have copies of
14:17:27 11 it, do you recall going back to Marsh and saying
14:17:33 12 there is -- the SOV is incomplete in the following
14:17:35 13 ways?

14:17:36 14 A. No. The statement of values that I
14:17:40 15 received is complete as far as I know it from Marsh.

14:17:49 16 Q. And would you have also taken the time to
14:17:52 17 look through the equipment schedule?

14:17:56 18 A. I would scan it, yes.

14:18:13 19 Q. Can you tell me what a policy writing
14:18:14 20 index is?

14:18:17 21 A. I would have to see it.

14:18:17 22 MR. PURI: Okay. I'm not going to mark
14:18:23 23 it, I'm just going to show it to the witness. I'm
14:18:25 24 going to show you a copy, too.

14:18:28 25 MR. RUBY: I have seen it.

14:22:01 1 Q. Is this the statement of values that was
14:22:02 2 submitted as part of the Marsh specifications for
14:22:05 3 the '05-'06 policy?

14:22:06 4 A. Yes.

14:22:09 5 Q. And when you reviewed these
14:22:19 6 specifications, do you remember making any notes? I
14:22:22 7 see a few different handwritten notations, really
14:22:25 8 tiny ones on the first page on the Location Total
14:22:30 9 Value column. There is an underline.

14:22:36 10 A. Yeah. Those aren't mine.

14:22:37 11 Q. Those aren't yours? So you testified
14:22:41 12 earlier that one thing you did was review the SOVs,
14:22:45 13 and that's one reason you didn't look too much to
14:22:46 14 the numbers in the Marsh specs because you paid more
14:22:49 15 attention to this.

14:22:53 16 What analysis did you do with respect to
14:22:55 17 this document?

14:23:02 18 A. I evaluated the exposure, I looked at the
14:23:04 19 values per location, per earthquake zone, per wind
14:23:12 20 zone, per if there was any flood zones.

14:23:19 21 Q. And depending on the zone, would you group
14:23:22 22 the exposures by zone, or how did -- how did that
14:23:26 23 matter, what zone it was at?

14:23:28 24 A. Yes. You would add up the locations
14:23:30 25 per -- per earthquake zone, per wind zone, and that

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14:23:37 1 would be, take a different rate than the fire rate
14:23:39 2 on the other locations.

14:23:41 3 Q. And so part of the purpose at least of
14:23:43 4 these calculations was to help determine the
14:23:45 5 premium?

14:23:46 6 A. And to evaluate the risk.

14:23:48 7 Q. I see.

14:23:49 8 A. And the chances for loss.

14:23:52 9 Q. And you know, we know obviously that the
14:23:55 10 policy was written for '05-'06. But did you have
14:23:59 11 any kind of opinion, I don't know that I have seen a
14:24:02 12 specific document on point, at this point in your
14:24:04 13 mind, that this was a high risk policy to write,
14:24:09 14 this was a low risk or medium? Or simply that it
14:24:13 15 was an acceptable risk?

14:24:15 16 A. Yeah, it's either acceptable or
14:24:17 17 unacceptable.

14:24:22 18 Q. And again, when you reviewed this
14:24:24 19 document, you didn't -- you weren't looking at it
14:24:26 20 with the perspective of saying this isn't here or
14:24:29 21 this isn't here, you simply took whatever was here
14:24:31 22 and assumed that that was the complete and final
14:24:33 23 document being submitted to you.

14:24:35 24 Correct?

14:24:36 25 A. Correct.

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14:24:49 1 Q. So then, is it accurate to say that for
14:24:51 2 whatever locations, whether they be yard 105 or
14:24:55 3 another yard, where there were numbers not in
14:24:59 4 various columns, that those locations didn't become
14:25:03 5 a part of your calculations?
14:25:05 6 A. That's correct.
14:25:06 7 Q. And if that was the case, did you tell
14:25:08 8 Marsh that -- anyone at Marsh that there are certain
14:25:12 9 locations that are simply not being calculated?
14:25:15 10 MR. RUBY: Locations?
14:25:16 11 MR. PURI: Yards. The values for the
14:25:18 12 yards.
14:25:19 13 MR. RUBY: Okay. As opposed to columns?
14:25:22 14 MR. PURI: Right.
14:25:24 15 THE WITNESS: No. There -- it could --
14:25:26 16 it's -- it's possible they are covered elsewhere,
14:25:28 17 it's possible that they don't want them to be
14:25:30 18 covered. No, it's -- no. This is -- this is the
14:25:35 19 complete statement of values for this insured.
14:25:40 20 MR. PURI: Q. Yeah. And I guess what I'm
14:25:41 21 saying is, is it accurate to say, then, that there
14:25:43 22 was no going back and forth about what was not on
14:25:45 23 the list?
14:25:46 24 A. Correct.
14:25:57 25 Q. Do you recall there being a point in time

14:40:20 1 percent earned premium or you delete some locations.
14:40:23 2 We are not going to go down to less than 25 percent
14:40:25 3 of the 400,000 in premium.

14:40:34 4 Q. And is there anywhere on this particular
14:40:36 5 renewal quote that discusses or references the SOV
14:40:39 6 that was submitted with the specs from Marsh?

14:40:41 7 A. Where it says Total, TIV, that's the total
14:40:46 8 insurable values from the statement of values.

14:40:54 9 Q. And was it your opinion that if a
14:40:58 10 particular yard listed on the SOV did not contain
14:41:02 11 certain values in the columns that there was no
14:41:06 12 coverage for that particular yard?

14:41:09 13 A. There was no coverage for that
14:41:11 14 particular -- for that particular column.

14:41:16 15 Q. Whatever that missing number was from that
14:41:18 16 column, there would be no coverage.

14:41:19 17 Correct?

14:41:20 18 A. Correct.

14:41:27 19 Q. Is there typically a place in the renewal
14:41:29 20 quotes for key exclusions? I see under Form it
14:41:38 21 talks about exclusion for cyber risk or I don't know
14:41:42 22 if that's --

14:41:43 23 A. Those are mandatory exclusions.

14:41:49 24 Q. But there is nowhere on this renewal quote
14:41:53 25 that makes clear that there will be no coverage for

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14:43:59 1 Q. Neither the agreed value, nor the
14:44:02 2 replacement cost boxes are checked.

14:44:04 3 Right?

14:44:05 4 A. Correct.

14:44:05 5 Q. It's a time element --

14:44:06 6 A. Yes.

14:44:07 7 Q. -- calculation? Okay.

14:44:09 8 And is there anywhere in the '05-'06
14:44:13 9 policy where it states that if a particular value on
14:44:18 10 a particular column in an SOV is omitted it will not
14:44:23 11 be covered?

14:44:25 12 A. That's not the wording. But if you look
14:44:29 13 at the description of covered property, it says
14:44:32 14 "Building means the building or structure described
14:44:35 15 in the declarations." And then that -- it gets back
14:44:44 16 to the statement of values.

14:44:45 17 And that's the same for the personal
14:44:47 18 property as well.

14:44:49 19 Q. And by the '05-'06 policy, we have been
14:44:53 20 using statement of values loosely, I think it's
14:44:56 21 being referred to as the schedule on file with the
14:44:58 22 company?

14:44:58 23 A. Yes.

14:44:59 24 Q. Okay. Is there anywhere in the '05-'06
14:45:01 25 policy that defines schedule?

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14:58:53 1 MR. PURI: Q. And is what's supposed to
14:58:56 2 be in the schedule listed right above that,
14:58:58 3 "Designated locations, (address, city, state, zip
14:59:04 4 code)"?

14:59:07 5 A. If there were a few locations, you could
14:59:09 6 list them. But on policies that just have big
14:59:11 7 schedules, we just refer to the statement of values.

14:59:14 8 Q. And is there anything in the policy that
14:59:15 9 tells the insured what is supposed to be contained
14:59:18 10 in the schedule?

14:59:21 11 A. POL 0222, No. 2, it says "Premises
14:59:32 12 described, see schedule of locations."

14:59:35 13 Q. Okay. And my question is, is there
14:59:38 14 anything more specific in the policy that says what
14:59:41 15 is supposed to be on that schedule, the particular
14:59:44 16 columns of information, aside from address, city,
14:59:50 17 state, zip code, that's listed on POL 232?

14:59:55 18 A. This would mirror the statement of values
14:59:58 19 since you can't list everything here.

15:00:11 20 Q. Is there anywhere in the policy that tells
15:00:13 21 the insured that a location will not be insured if
15:00:16 22 it doesn't have a value on the statement of values?

15:00:28 23 A. No.

15:00:28 24 Q. And do you know if anybody else from USFIC
15:00:31 25 from co -- from USFIC, excuse me, whether it be

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15:21:29 1 Q. What do you recall about that e-mail, or
15:21:34 2 e-mails?
15:21:34 3 A. I believe I told him that there were no
15:21:36 4 values at that location.
15:21:39 5 Q. Was that an e-mail that you reviewed with
15:21:41 6 counsel yesterday?
15:21:42 7 A. No.
15:21:45 8 Q. Did you undertake to review any of your
15:21:47 9 e-mails or documents independent of meeting with
15:21:50 10 counsel before today's deposition?
15:21:51 11 A. No. No.
15:21:53 12 Q. So you remember that e-mail off the top of
15:21:55 13 your head with Mr. Clarke?
15:21:57 14 A. Yes.
15:22:00 15 Q. And I'm trying to find it for you so I can
15:22:02 16 show it to you.
15:22:48 17 While I'm looking for it, do you remember
15:22:50 18 Mr. Clarke asking you whether or not there was
15:22:52 19 coverage for that particular yard? Yard 105?
15:22:58 20 A. I'd have to see the e-mail. But I --
15:22:59 21 he -- I think I told him that there wasn't any
15:23:02 22 coverage.
15:23:03 23 Q. What analysis did you do before coming to
15:23:05 24 that conclusion?
15:23:06 25 A. I looked at the statement of values.

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15:23:08 1 Q. Do you recall what statement of values you
15:23:09 2 looked at?
15:23:09 3 A. The one that was in effect at that time.
15:23:12 4 Q. And is that one that we had seen here
15:23:14 5 today?
15:23:14 6 A. It would be the one that would -- that
15:23:16 7 would have come in -- yes, the one that would have
15:23:19 8 come in with the 10/1/05 renewal.
15:23:24 9 Q. The specifications or the actual --
15:23:27 10 A. The specs, the statement of values that
15:23:29 11 came in with the specifications.
15:23:31 12 Q. And is it accurate to say that the SOV
15:23:33 13 that we are talking about is Exhibit 18 in front of
15:23:35 14 you?
15:23:35 15 A. Yes.
15:23:38 16 Q. So you recall whatever the exact language
15:23:41 17 was Mr. Clarke, a discussion with Mr. Clarke by
15:23:44 18 e-mail about yard 105, and giving him the opinion
15:23:49 19 that there was no coverage for that yard because
15:23:50 20 there was no value stated for -- stated in the SOV.
15:23:57 21 Did you think that there was coverage for lost
15:24:00 22 inventory?
15:24:01 23 A. No, because the inventory had been
15:24:02 24 deleted.
15:24:03 25 Q. Okay. Aside from looking at the SOV, was

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15:42:45 1 misrepresentation alleged in USFIC's counterclaim
15:42:49 2 and USFIC's alleged reliance thereon, can you tell
15:42:54 3 me what misrepresentations Copart made?
15:42:59 4 MR. RUBY: Objection. She was not
15:43:00 5 designated -- as I explained at the outset, she was
15:43:03 6 designated to testify as to what representations
15:43:05 7 were made. And she's testified to that.
15:43:09 8 But you can ask her some more questions
15:43:10 9 about that, if you like.
15:43:12 10 MR. PURI: Oh, I see what you are saying.
15:43:13 11 MR. RUBY: Whether or not Copart was
15:43:15 12 telling the truth is not something we have produced
15:43:16 13 this witness to testify to.
15:43:24 14 MR. PURI: Okay.
15:43:24 15 Q. So let's talk about the representations.
15:43:28 16 Did you consider the numbers set forth in the SOV
15:43:31 17 statement to be representations by Copart?
15:43:34 18 A. Yes.
15:43:34 19 Q. Did you consider them estimates?
15:43:37 20 A. No.
15:43:38 21 Q. What did you consider those numbers? Hard
15:43:41 22 fact?
15:43:41 23 A. To be their -- the values at risk at the
15:43:44 24 time that they produced the statement of values.
15:43:52 25 Q. Couldn't those numbers also be considered

CERTIFICATE OF REPORTER

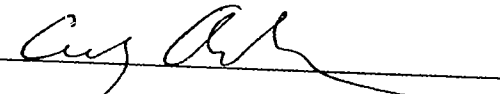
I, Corey Anderson, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript [] was ☒ was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: 5/29/08


COREY ANDERSON, CSR No. 4096